

In the Matter of License No. 222817 and all other Seaman Documents
Issued to: JOHN J. COLLINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1077

JOHN J. COLLINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 March 1958, an Examiner of the United States Coast Guard at Boston, Massachusetts suspended Appellant's seaman documents upon finding him guilty of negligence. The specification alleges that while serving as Pilot on board the Panamanian SS NICHOLAOS under authority of the document above described, on or about 24 October 1957, Appellant failed to keep clear of the north edge of Hog Island Channel while navigating through the channel, thereby causing the vessel to ground.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of not guilty to the charge and specification.

The Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer introduced in evidence the testimony of four witnesses. Appellant testified in his behalf. He stated that the vessel was well under control when she struck an "unknown object" at a point about 150 feet inside the edge of the marked channel.

Throughout the hearing, the Examiner deferred ruling on counsel's motion to dismiss on jurisdictional grounds.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of one month on six months' probation.

The decision was served on 18 March 1958. Appeal was timely

filed on 16 April.

FINDINGS OF FACT

On 24 October 1957, Appellant was serving as Pilot on board the Panamanian SS NICHOLAOS and acting under authority of his License No.222817 while the ship was transiting the Cape Cod Canal, Massachusetts, en route from Boston, Massachusetts to Baltimore, Maryland.

Appellant obtained this employment as a result of being an apprentice member of the New England Pilots' Association. A prerequisite to membership in this association is a Federal pilot's license with pilotage endorsements for the Cape Cod Canal and other waters in the area. The laws of Massachusetts could, but do not, require vessels passing through the Cape Cod Canal to have a State licensed pilot on board. The Canal is under the supervision of the Corps of Engineers, U. S. Army, New England Division, Boston. There is no compulsory pilotage regulation by the Corps of Engineers with respect to the Canal.

The NICHOLAOS departed from Boston on the morning of 24 October with a draft of 5 feet forward, 16 feet, 6 inches aft. The ship is a single screw Liberty-type freighter, 442 feet in length and 7210 gross tons. She was in a light condition carrying water ballast.

Appellant assumed the conn prior to entering the Canal at its easterly end at 1610. From this point, the Canal extends in a southwesterly direction for a distance of 17.4 miles made up of the Easterly entrance (0.5 miles), Canal Land Cut (8.1 miles), Hog Island channel (4.7 miles) and Cleveland Ledge Channel (4.1 miles). Although the latter two channels are technically part of the Cape Cod Canal, they are dredged channels in open water rather than being land-locked as the other two sections of the Canal are. The accident occurred in the Hog Island Channel which is a well marked channel and has a bottom width of 500 feet. The depth is 32 feet at mean low water. The channel course is 215 degrees true from a point about a mile above the place of the casualty to the westerly end of Hog Island Channel. Appellant had made approximately 150 trips through the Cape Cod Canal.

The NICHOLAOS passed a ship going in the opposite direction near the westerly end of the Canal Land Cut. Shortly thereafter, the Corps of Engineers' launch hailed the ship and informed Appellant that Hog Island Channel Lighted Buoy No. 10 was out of position and in the middle of the channel. The buoy was then about 2 miles ahead.

The ship proceeded along Hong Island Channel at a speed of approximately ??? knots. The weather was clear, current slack, and the wind S.S.W. at 30 to 35 knots --- approximately one point on the vessel's port bow. Courses of 212 to 214 degrees true were steered to compensate for the wind. Appellant sighted Buoy No. 10 in mid-channel at a distance of more than one mile. The helmsman was ordered to steer on the buoy as the ship continued on her starboard side of the Channel. Appellant intended to pass Buoy No. 10 close aboard on his port hand.

Shortly before the bow of the NICHOLAOS was abeam of Buoy No. 9A and when Buoy No. 10 was less than one-half mile ahead, the ship's starboard quarter struck the channel bank with considerable force. The impact damaged the propeller to the extent of affecting the maneuverability of the ship. The Master immediately relieved Appellant and gave orders to let go the starboard anchor and stop the engines. The forward speed, together with the drag on the starboard anchor and the wind on the port bow, caused the vessel to take a rank sheer to starboard out of the channel where she grounded near Buoy No. 9A. The vessel floated free the next morning and was towed to an anchorage. There were no injuries to personnel. The cost of repairing the damage was about \$30,000.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Coast Guard has no jurisdiction to proceed against his license in this case because a foreign vessel is not required by statute to have a Federally licensed pilot, or any other pilot, on board in the Cape Cod Canal. Also, Appellant could not have been "acting under the authority of his license" because the license issued to him by the Coast Guard only "authorizes" him to serve on merchant vessels of the United States. The requirement of a license by a third party cannot confer jurisdiction not contained in a statute.

The findings, conclusions and order of the Examiner are unwarranted by the evidence and by the law.

It is submitted that the decision should be reversed on the jurisdictional point involved.

Appearances: Ely, Bartlett and Brown of Boston, Massachusetts by
John O. Parker, Esquire, of counsel

OPINION

In Commandant's Supplemental Appeal Decision No. 491, the reasons and authorities are fully set forth for concluding that a

Federally licensed pilot on a United States merchant vessel was "acting under the authority of his license," within the meaning of 46 U.S.C. 239, although there was no legal requirement that a pilot be conning the vessel, at the time, on the Hudson River. This decision concluded, in essence, that there was jurisdiction to proceed against the pilot's license because he was, in fact, hired to serve as pilot on the ship only because he had a Federal license. After fully considering the arguments set forth herein by the Appellant, it is my opinion that the same fundamental reasoning applies to this case where the only basic difference is that Appellant was the pilot on a foreign vessel.

Even though licenses are issued primarily for service on U.S. vessels, it would be inconsistent with the statutory duty of the Coast Guard, to protect lives and property at sea, to say that the owner of a foreign vessel cannot rely upon the protection that some form of remedial, disciplinary action may be taken against a pilot who navigates a foreign ship in a negligent manner on waters of the United States. A pilotage endorsement for particular waters in the United States is prima facie evidence that the pilot is qualified to navigate safely this body of water with any ship. If reliance is placed upon such an endorsement when hiring a pilot, there must be some power by which the licensing authority can take action when the pilot negligently navigates a ship on waters for which his license is endorsed. The agent of the NICHOLAOS testified that he assumed the pilot obtained through the New England Pilots' Association would be qualified by the Coast Guard as they had been on all previous occasions. Hence, it is my conclusion that Appellant was "acting under the authority of his license" within the meaning of 46 U.S.C. 239 and, therefore, there is jurisdiction to take action in this case.

As to the merits of the case, I think that Appellant was guilty of negligence to a minor degree. The mild order imposed by the Examiner seems to recognize this slight degree of fault. It is apparent that the starboard quarter of the ship struck the channel bank despite Appellant's testimony that it was an "unknown object." The vessel was high in the water with a 30 to 35 knot wind on the port bow. She was proceeding along the starboard side of the channel in order to pass Buoy No. 10, which was out of position in mid-channel, to port. Under these conditions, it is felt that Appellant was concentrating on Buoy No. 10, in his efforts to keep the buoy dead ahead, to such a great extent that he failed to realize that the ship's stern was setting over toward the starboard edge of the channel although he thought the ship was well under control. Appellant's failure to observe and correct this movement led to the grounding. In a channel 500 feet wide, this is considered to have been negligence on his part which cannot be completely condoned.

The Corps of Engineers' publication on the Cape Cod Canal states in the general information section that "navigators are warned to be on the alert for possible 'bank suction' and 'bank cushion', the effects of which may cause a vessel to take a sudden sheer." There may have been some bank suction involved in this case despite the fact the sheer does not appear to have been sudden at least until the starboard quarter was very close to the bank. Knowledge of the information in this publication required greater than usual care on Appellant's part in this respect.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 12 March 1958, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 7th day of November 1958.